

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 20

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## IN THE SENATE OF THE UNITED STATES

MARCH 4 (legislative day, MARCH 3), 1993

Received; read twice and referred to the Committee on Governmental Affairs

JULY 20 (legislative day, JUNE 30), 1993

Committee discharged

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## AN ACT

To amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Federal Employees Po-  
5        litical Activities Act of 1993”.

6        **SEC. 2. POLITICAL ACTIVITIES.**

7        (a) IN GENERAL.—Subchapter III of chapter 73 of  
8        title 5, United States Code, is amended to read as follows:

1 “SUBCHAPTER III—POLITICAL ACTIVITIES

2 **“§ 7321. Political participation**

3 “It is the policy of the Congress that employees  
4 should be encouraged to exercise fully, freely, and without  
5 fear of penalty or reprisal, and to the extent not expressly  
6 prohibited by law, their right to participate or to refrain  
7 from participating in the political processes of our Nation.

8 **“§ 7322. Definitions**

9 “For the purpose of this subchapter—

10 “(1) the term ‘employee’ means any individ-  
11 ual—

12 “(A) employed or holding office in an Ex-  
13 ecutive agency, other than the General Account-  
14 ing Office; or

15 “(B) employed in a position within the  
16 competitive service which is not in an Executive  
17 agency;

18 but does not include the President or the Vice Presi-  
19 dent, or a member of the uniformed services;

20 “(2) the term ‘candidate’ means any individual  
21 who seeks nomination for election, or election, to any  
22 elective office, whether or not the individual is elect-  
23 ed, and, for the purpose of this paragraph, an indi-  
24 vidual shall be considered to seek nomination for

1 election, or election, to an elective office, if the indi-  
2 vidual has—

3 “(A) taken the action required to qualify  
4 for nomination for election, or election, to that  
5 office; or

6 “(B) received any political contribution  
7 (other than any personal services described in  
8 paragraph (3)(C)) or made any expenditure, or  
9 has given consent for any other person to re-  
10 ceive any political contribution (other than any  
11 such personal services) or make any expendi-  
12 ture, with a view to bringing about the individ-  
13 ual’s nomination for election, or election, to  
14 that office;

15 “(3) the term ‘political contribution’ means any  
16 gift, subscription, loan, advance, or deposit of money  
17 or anything of value, made for any political purpose,  
18 and includes—

19 “(A) any contract, promise, or agreement,  
20 express or implied, whether or not legally en-  
21 forceable, to make a contribution for any politi-  
22 cal purpose;

23 “(B) any payment by any person, other  
24 than a candidate or a political party or affili-  
25 ated organization, of compensation for the per-

1           sonal services of another person which are  
2           rendered to any candidate or political party or  
3           affiliated organization without charge for any  
4           political purpose; and

5                 “(C) the provision of personal services for  
6           any political purpose;

7                 “(4) the term ‘superior’ means any employee  
8           who exercises supervision of, or control or adminis-  
9           trative direction over, another employee;

10                “(5) the term ‘elective office’ means any elective  
11           public office and any elective office of any political  
12           party or affiliated organization;

13                “(6) the term ‘person’ includes any individual,  
14           corporation, trust, association, State, local, or for-  
15           eign government, territory or possession of the Unit-  
16           ed States, or agency or instrumentality of any of the  
17           foregoing; and

18                “(7) the term ‘Special Counsel’ means the Spe-  
19           cial Counsel appointed under section 1211(b).

20   **“§ 7323. Use of official influence or official informa-**  
21                 **tion; prohibition**

22                “(a) An employee may not directly or indirectly use  
23           or attempt to use the official authority or influence of the  
24           employee for the purpose of—

1           “(1) interfering with or affecting the result of  
2           any election; or

3           “(2) intimidating, threatening, coercing, com-  
4           manding, influencing, or attempting to intimidate,  
5           threaten, coerce, command, or influence—

6                   “(A) any individual for the purpose of  
7                   interfering with the right of any individual to  
8                   vote as the individual may choose, or of causing  
9                   any individual to vote, or not to vote, for any  
10                  candidate or measure in any election;

11                  “(B) any person to give or withhold any  
12                  political contribution; or

13                  “(C) any person to engage, or not to en-  
14                  gage, in any form of political activity.

15           “(b) An employee may not directly or indirectly use  
16           or attempt to use, or permit the use of, any official infor-  
17           mation obtained through or in connection with such em-  
18           ployee’s employment for any political purpose, unless the  
19           official information is available to the general public.

20           “(c) For the purpose of subsection (a), ‘use of official  
21           authority or influence’ includes—

22                   “(1) promising to confer or conferring any ben-  
23                   efit (such as any compensation, grant, contract, li-  
24                   cense, or ruling) or effecting or threatening to effect

1 any reprisal (such as deprivation of any compensa-  
2 tion, grant, contract, license, or ruling); or

3 “(2) taking, directing others to take, rec-  
4 ommending, processing, or approving any personnel  
5 action.

6 “(d) Nothing in this section shall be considered to  
7 apply with respect to any actions if, or to the extent that,  
8 such actions are taken in order to carry out the duties  
9 and responsibilities of one’s position.

10 **“§ 7324. Solicitation; prohibition**

11 “(a) An employee may not—

12 “(1) give or offer to give a political contribution  
13 to any individual either to vote or refrain from vot-  
14 ing, or to vote for or against any candidate or meas-  
15 ure, in any election;

16 “(2) solicit, accept, or receive a political con-  
17 tribution to vote or refrain from voting, or to vote  
18 for or against any candidate or measure, in any elec-  
19 tion;

20 “(3) knowingly give or hand over a political  
21 contribution to a superior of the employee; or

22 “(4) knowingly solicit, accept, or receive, or be  
23 in any manner concerned with soliciting, accepting,  
24 or receiving, a political contribution—

1           “(A) from another employee (or a member  
2           of another employee’s immediate family) with  
3           respect to whom the employee is a superior; or

4           “(B) in any room or building occupied in  
5           the discharge of official duties by—

6                   “(i) an individual employed or holding  
7                   office in the Government of the United  
8                   States; or

9                   “(ii) an individual receiving any salary  
10                  or compensation for services from money  
11                  derived from the Treasury of the United  
12                  States.

13          “(b)(1) In addition to the prohibitions of subsection  
14          (a), an employee may not knowingly solicit, accept, or re-  
15          ceive a political contribution from, or give a political con-  
16          tribution to, any person who—

17               “(A) has, or is seeking to obtain, contractual or  
18               other business or financial relations with the agency  
19               in which the employee is employed;

20               “(B) conducts operations or activities which are  
21               regulated by that agency; or

22               “(C) has interests which may be substantially  
23               affected by the performance or nonperformance of  
24               the employee’s official duties.

1       “(2) The Special Counsel shall prescribe regulations  
2 which exempt an employee from the application of para-  
3 graph (1) with respect to any political contribution to or  
4 from an individual who has a familial or personal relation-  
5 ship with the employee if the employee complies with such  
6 requirements as the Special Counsel shall so prescribe  
7 which relate to the disqualification of the employee from  
8 engaging in any official activity involving the individual.

9       “(3) The Special Counsel shall prescribe regulations  
10 under which paragraph (1) shall not apply with respect  
11 to any political contribution from a person in situations  
12 in which the facts and circumstances indicate there would  
13 not be any adverse effect on the integrity of the Govern-  
14 ment or the public’s confidence in the integrity of the Gov-  
15 ernment.

16 **“§ 7325. Political activities on duty, etc.; prohibition**

17       “(a) An employee may not engage in political activ-  
18 ity—

19               “(1) while the employee is on duty;

20               “(2) in any room or building occupied in the  
21 discharge of official duties by an individual employed  
22 or holding office in the Government of the United  
23 States or any agency or instrumentality thereof;

24               “(3) while wearing a uniform or official insignia  
25 identifying the office or position of the employee; or



1           “(4) using any vehicle owned or leased by the  
2       Government of the United States or any agency or  
3       instrumentality thereof.

4           “(b)(1) An employee described in paragraph (2) may  
5       engage in political activity otherwise prohibited by sub-  
6       section (a) if the costs associated with that political activ-  
7       ity are not paid for by money derived from the Treasury  
8       of the United States.

9           “(2) Paragraph (1) applies to an employee—

10           “(A) the duties and responsibilities of whose po-  
11       sition continue outside normal duty hours and while  
12       away from the normal duty post; and

13           “(B) who is—

14           “(i) paid from an appropriation for the Ex-  
15       ecutive Office of the President; or

16           “(ii) appointed by the President, by and  
17       with the advice and consent of the Senate,  
18       whose position is located within the United  
19       States, who determines policies to be pursued  
20       by the United States in its relations with for-  
21       eign powers or in the nationwide administration  
22       of Federal laws.

1 **“§ 7326. Candidates for elective office; leave**

2 “(a) Except as provided in subsection (b), an em-  
3 ployee may not seek nomination for election, or election,  
4 to any Federal or State-wide elective public office.

5 “(b) Subsection (a) shall not prohibit an employee  
6 from seeking nomination for election, or election, to an  
7 elective public office if no person is seeking to be nomi-  
8 nated for, or elected to, such office as the candidate of  
9 a party any of whose candidates for presidential elector  
10 received votes in the last preceding election at which presi-  
11 dential electors were selected.

12 “(c) The standards applicable under section 7322(2)  
13 in determining whether an individual is seeking nomina-  
14 tion for election, or election, to an office shall apply for  
15 purposes of making any such determination under this  
16 section.

17 “(d)(1) This subsection shall apply with respect to  
18 a candidate for any elective office, except that, in the case  
19 of an elective public office, this subsection shall not apply  
20 unless the office is one which may be sought by the em-  
21 ployee involved under the preceding provisions of this sec-  
22 tion.

23 “(2) Except as provided in paragraph (3), an em-  
24 ployee who is a candidate shall, upon the request of the  
25 employee, and for the purpose of allowing the employee  
26 to engage in activities relating to that candidacy—

1           “(A) be granted leave without pay; and

2           “(B) notwithstanding section 6302(d), be  
3           granted accrued annual leave.

4           “(3) A request for leave under subparagraph (A) or  
5           (B) of paragraph (2) may be denied if the exigencies of  
6           the public business so require. Any such denial shall be  
7           in writing and shall be accompanied by a statement of the  
8           reasons why the request is being denied.

9           “(4) An employee may not be required to take leave  
10          without pay under paragraph (2)(A), or accrued annual  
11          leave under paragraph (2)(B), in order to be a candidate,  
12          unless the activities relating to the candidacy interfere  
13          with the employee’s performing the duties of such employ-  
14          ee’s position.

15       **“§ 7327. Continued applicability of former provisions**

16          “(a) This subchapter shall, with respect to employees  
17          of the Federal Election Commission, be administered in  
18          accordance with the following:

19               “(1) The provisions of this subchapter (as  
20               amended by the Federal Employees Political Activi-  
21               ties Act of 1993) shall be deemed to have no force  
22               or effect, except for this section.

23               “(2) The provisions of this subchapter (as last  
24               in effect before the amendments made by the Fed-  
25               eral Employees Political Activities Act of 1993 took

1 effect) shall be deemed to have remained in effect,  
2 except for former section 7325.

3 “(b) For purposes of applying the provisions of chap-  
4 ter 12 which relate to the authority of the Special Counsel  
5 to conduct investigations, and to seek corrective or dis-  
6 ciplinary action, in connection with any misconduct under  
7 this subchapter, and for purposes of any other provision  
8 of law, this subchapter shall, to the extent it is being ap-  
9 plied with respect to employees of the Federal Election  
10 Commission, be construed in accordance with subsection  
11 (a).

12 **“§ 7328. Regulations**

13 “The Special Counsel shall prescribe any rules and  
14 regulations necessary to carry out this subchapter.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

16 (1) Section 3302(2) of title 5, United States Code, is  
17 amended by striking “7203, 7321, and 7322” and insert-  
18 ing “and 7203”.

19 (2)(A) Sections 8332(k)(1), 8706(c), and 8906(e)(2)  
20 of title 5, United States Code, are each amended by insert-  
21 ing immediately after “who enters on” the following:  
22 “leave without pay granted under section 7326(a) of this  
23 title, or who enters on”.

24 (B) Section 8411(e) of title 5, United States Code,  
25 is amended by inserting immediately before “approved

1 leave without pay” the following: “leave without pay  
2 granted under section 7326(a) of this title, or”.

3 (3) The section analysis for subchapter III of chapter  
4 73 of title 5, United States Code, is amended to read as  
5 follows:

“SUBCHAPTER III—POLITICAL ACTIVITIES

“7321. Political participation.

“7322. Definitions.

“7323. Use of official influence or official information; prohibition.

“7324. Solicitation; prohibition.

“7325. Political activities on duty, etc.; prohibition.

“7326. Candidates for elective office; leave.

“7327. Continued applicability of former provisions.

“7328. Regulations.”.

6 (4) Section 1216(c) of title 5, United States Code is  
7 amended—

8 (A) by striking paragraph (1); and

9 (B) in paragraph (2)—

10 (i) by striking “(2) If” and inserting “If”;

11 and

12 (ii) by inserting “(1),” before “(3),”.

13 (5) Section 1501(1) of title 5, United States Code,  
14 is amended by inserting “, the District of Columbia,” after  
15 “State”.

16 (c) AMENDMENTS TO TITLE 18.—(1) Section 602 of  
17 title 18, United States Code, relating to solicitation of po-  
18 litical contributions, is amended—

19 (A) by inserting “(a)” before “It”;

1 (B) by striking all that follows “Treasury of the  
2 United States” and inserting a semicolon and the  
3 following:

4 “to knowingly solicit any contribution within the meaning  
5 of section 301(8) of the Federal Election Campaign Act  
6 of 1971 from any other such officer, employee, or person.  
7 Any person who violates this section shall be fined under  
8 this title or imprisoned not more than three years, or  
9 both.”; and

10 (C) by adding at the end the following:

11 “(b) The prohibition in subsection (a) shall not apply  
12 to any activity of an employee (as defined in section  
13 7322(1) of title 5) or any individual employed in or under  
14 the United States Postal Service or the Postal Rate Com-  
15 mission, unless that activity is prohibited by section 7323  
16 or 7324 of that title.”.

17 (2) Section 603 of title 18, United States Code, relat-  
18 ing to making political contributions, is amended by add-  
19 ing at the end thereof the following new subsection:

20 “(c) The prohibition in subsection (a) shall not apply  
21 to any activity of an employee (as defined in section  
22 7322(1) of title 5) or any individual employed in or under  
23 the United States Postal Service or the Postal Rate Com-  
24 mission, unless that activity is prohibited by section 7324  
25 of that title.”.

1       (d) AMENDMENTS TO THE VOTING RIGHTS ACT OF  
2 1965.—Section 6 of the Voting Rights Act of 1965 (42  
3 U.S.C. 1973d) is amended by striking out “the provisions  
4 of section 9 of the Act of August 2, 1939, as amended  
5 (5 U.S.C. 118i), prohibiting partisan political activity”  
6 and by inserting in lieu thereof “the provisions of sub-  
7 chapter III of chapter 73 of title 5, United States Code,  
8 relating to political activities”.

9       (e) APPLICABILITY TO POSTAL OFFICERS AND EM-  
10 PLOYEES.—

11           (1) IN GENERAL.—The amendments made by  
12 this section, and any regulations thereunder, shall  
13 apply with respect to officers and employees of the  
14 United States Postal Service and the Postal Rate  
15 Commission, pursuant to sections 410(b) and  
16 3604(e) of title 39, United States Code.

17           (2) INVESTIGATIVE AND ENFORCEMENT AU-  
18 THORITY.—The Special Counsel (appointed under  
19 section 1211(b) of title 5, United States Code) may  
20 conduct investigations and seek disciplinary action  
21 with respect to any officer or employee referred to  
22 in paragraph (1) in accordance with applicable pro-  
23 visions of chapter 12 of such title.

1 **SEC. 3. EFFECTIVE DATE.**

2 (a) IN GENERAL.—The amendments made by this  
3 Act shall take effect 120 days after the date of the enact-  
4 ment of this Act, except that the authority to prescribe  
5 regulations granted under section 7328 of title 5, United  
6 States Code (as added by section 2 of this Act), shall take  
7 effect on the date of the enactment of this Act.

8 (b) PENALTIES NOT AFFECTED.—Any repeal or  
9 amendment made by this Act of any provision of law shall  
10 not release or extinguish any penalty, forfeiture, or liabil-  
11 ity imposed under that provision, and that provision shall  
12 be treated as remaining in force for the purpose of sus-  
13 taining any proper proceeding or action for the enforce-  
14 ment of that penalty, forfeiture, or liability.

15 (c) PENDING PROCEEDINGS NOT AFFECTED.—No  
16 provision of this Act shall affect any judicial or adminis-  
17 trative proceeding commenced on or before the effective  
18 date of the amendments made by this Act. Orders shall  
19 be issued in such proceedings and appeals shall be taken  
20 therefrom as if this Act had not been enacted.

Passed the House of Representatives March 3,  
1993.

Attest: DONNALD K. ANDERSON,  
*Clerk.*

HR 20 CDS—2